

AGREEMENT FOR SHARING THE COSTS OF THE BAY-DELTA SOLUTION

I) Principles of Agreement

A) Preamble

In order to create a framework for equitably sharing the costs of the long-term Bay-Delta Solution, and pursuant to Title XI of Public Law 104-333, California Bay Delta Environmental Enhancement (hereinafter "Bay-Delta Act") and the Safe, Clean, Reliable Water Supply Act (hereinafter "Proposition 204") approved by the voters of California on November 5, 1996 this Agreement is made and entered into on this _____ day of _____ by the State of California (hereinafter "State" or "California") represented by the Secretary for Resources and the United States, represented by the Secretary of the Interior.

B) Purposes

- 1) Comply with Proposition 204. To comply with section 78537 of Proposition 204 which requires that the State secure, to the greatest extent possible, federal and nonfederal matching funds to accompany the expenditure of \$60 million in State Category III funds and to comply with section 78684.10 of Proposition 204 which requires that a State-Federal cost sharing agreement be executed before the \$390 million authorized for the Bay-Delta Ecosystem Restoration Account can be expended.
- 2) Comply with Bay-Delta Act. To comply with the provisions of the Bay-Delta Act which authorize expenditures of \$ 143,300,000 for each of federal fiscal years 1998, 1999, and 2000 for the initial federal share of the Category III program and of developing and implementing a long-term Bay-Delta ecosystem restoration program, in accordance with the cost sharing agreement described in section B.1 above.
- 3) Enable FY 98 Expenditures of Federally Appropriated Funds. To provide a mechanism, under existing authorities and in coordination with existing and ongoing programs, to initiate early implementation of projects and programs common to all of the alternatives now under consideration by the CALFED Bay-Delta Program with the goal of providing early environmental and other benefits and providing valuable information for use in adaptively managing the Bay-Delta in future years as the CALFED Bay-Delta Program continues.
- 4) Coordinate Other Expenditures under Proposition 204 with Bay-Delta Program. To promote the goal that all funds authorized by Proposition 204 for expenditure on aspects of the Bay-Delta and related watersheds are coordinated with the goals, objectives, and Solution strategies of the CALFED Bay-Delta Program.
- 5) Coordinate Expenditures with Existing Programs. To provide a mechanism for coordinating expenditures of new funds authorized by the Bay-Delta Act

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and Proposition 204 with expenditures under existing State, Federal, local and non-governmental programs such as the Central Valley Project Improvement Act (hereinafter "CVPIA"), the fish-screen program of the Natural Resources Conservation Service, and other programs with the goal of developing an integrated planning process for restoration planning, project selection, and implementation, thereby increasing the overall effectiveness of restoration efforts in the Bay-Delta ecosystem.

- 6) Establish Framework of Principles for Long-term Cost Sharing. To set forth a framework of principles that can guide State, Federal, local and non-governmental cost sharing for the long-term Solution selected for the Bay-Delta.

C) Definitions

The following terms have the following meanings:

- 1) "Action" means a project or program selected for funding pursuant to this Agreement and subject to cost sharing pursuant to this Agreement and for which costs will be itemized individually.
- 2) "Baseline" for spending on Bay-Delta ecosystem restoration means those funds, programs and projects set forth in Appendix ____, which is incorporated into this Agreement by this reference.
- 3) "Bay-Delta" means the San Francisco Bay, Sacramento-San Joaquin Delta Estuary.
- 4) "Bay/Delta Advisory Council or BDAC" means a citizen advisory committee chartered under the Federal Advisory Committee Act (hereinafter FACA) to advise the agency participants in CALFED. It includes representatives of stakeholder groups jointly selected by the Governor of California and the U.S. Secretary of the Interior.
- 5) "CALFED" means a consortium of State and Federal agencies with management and regulatory responsibilities in the Bay-Delta, established pursuant to the Framework Agreement.
- 6) "CALFED Agency Team" means a joint State-Federal team consisting of staff from participating State and Federal agencies.
- 7) "CALFED Bay-Delta Program or Program" means the project team that began work in May 1995 toward developing the long-term Solution for the Bay-Delta. The Program was created pursuant to the Framework Agreement and subsequent implementing agreements including the CALFED Funding, Administration and Program Agreement.
- 8) "Category III" means non-flow-related measures for Bay-Delta ecosystem protection and restoration provided for in the Delta Accord and incorporated by the SWRCB in its Water Quality Control Plan for the Bay-Delta as part of the overall plan for Bay-Delta water quality.

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- 9) "Costs" means necessary and reasonable direct and indirect costs incurred, but not necessarily paid, for the implementation of Actions taken under this Agreement. Direct costs shall include labor and related fringe benefits, materials and supplies, travel, equipment depreciation, and items or services procured directly for carrying out the Actions. Indirect costs shall include the normal and necessary administrative and general costs of activities that are reasonably allocated to performing obligations under this Agreement. Allowance of costs under this Agreement including the basis for allocating indirect costs, shall be subject to cost allowance guidelines provided in Office of Management and Budget Circular A-87, dated January 15, 1981 and, with respect to expenditures by the State, shall be subject, where appropriate, to the caps on administrative costs provided in Proposition 204.
- 10) "Delta Accord" means the Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government signed in December 1994 by representatives of the State and Federal governments and urban, agricultural, and environmental interests.
- 11) "Early Implementation Projects" means those projects and programs which meet the criteria listed in Section I(E)4(b) of this Agreement.
- 12) "Ecosystem Roundtable" means a group of CALFED agency staff and stakeholders appointed to insure that stakeholder input is included in the process of priority setting and project selection for Bay-Delta ecosystem restoration. The Ecosystem Roundtable is an Advisory Group to BDAC for FACA purposes.
- 13) "Fiscal Year" means the federal fiscal year beginning October 1 and ending September 30.
- 14) "Framework Agreement" means the Memorandum of Agreement between the Governor's Water Policy Council and the Federal Ecosystem Directorate executed in June 1994.
- 15) "Local agency" means any city, county, city and county, district, public authority, public agency, or any other political subdivision, including joint powers agencies, of the State of California.
- 16) "Quarter" means each three-month period of each fiscal year beginning with the first day of October, January, April, or July.
- 17) "Solution" means the comprehensive long-term program of Actions developed by the CALFED Bay-Delta Program to address the problems of the Bay-Delta.
- 18) "Stakeholders" means urban and agricultural water users, fishing interests, environmental organizations, businesses, and others which use or have an interest in the Bay-Delta Estuary and who contribute to Bay-Delta Program design and to the problem-solving/decision-making process.

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19) "SWRCB" means the California State Water Resources Control Board.

20) "Task Order" means a written agreement, as described in _____, setting forth the parties' roles and responsibilities in carrying out each individual Action or element thereof.

D) Background and History

- 1) Importance of Resource. The Bay-Delta is the largest estuary on the West Coast of North America, providing habitat for 120 fish and wildlife species, some of which are listed as threatened or endangered. The Bay-Delta is also critical to California's economy, providing drinking water for more than 22 million Californians, serving industry, and providing irrigation water for millions of acres growing more than 200 crops, including 45 percent of the nation's produce.
- 2) History of Conflict. The Bay-Delta has for decades been the focus of competing interests—economic and ecological, urban and agricultural, and it has suffered from this. Habitats are declining, and several native species are endangered. The Bay-Delta no longer serves as a reliable source of high-quality water, and levees face an unacceptably high risk of failure. Though many efforts have been made to address these problems, the issues are complex and interrelated, and many remain unresolved. As Governor Pete Wilson noted in his Executive Order W-38-92, "...past water development has often taken place at the expense of fish and wildlife resources, and availability of water plays a key role in most efforts to mitigate for past harms and to restore and manage fish and wildlife populations and habitat." He further noted, "...continued population growth will create increased demands by urban and agricultural water users, and add to the challenge of restoring and maintaining healthy, viable fish and wildlife populations."
- 3) Creation of CALFED Bay-Delta Program. Pursuant to the Framework Agreement, signed by multiple State and Federal parties in June of 1994, and subsequent implementing agreements, the CALFED Bay-Delta Program was established in May 1995. The Program was charged with developing a comprehensive and long-term Solution to the problems associated with the Bay-Delta, including an equitable allocation of program costs among beneficiary groups, and of developing a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta. The Program is in the process of preparing a programmatic EIS/EIR for a long-term comprehensive plan that will resolve problems related to water quality, water supply reliability, levee system integrity, and ecosystem quality.
- 4) Delta Accord. In December 1994, representatives of the State and Federal governments and stakeholder representatives signed the Delta Accord. In addition to implementing the CALFED Bay-Delta Program, the signatories to the Delta Accord agreed to implementation of a Bay-Delta protection plan

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through the SWRCB including water quality standards and operational constraints for the State and Federal water export projects; provisions for implementation of the Federal Endangered Species Act; and so-called "Category III" principles. Under the Category III principles, the State and Federal governments and the stakeholders committed to develop, implement and finance non-flow measures for Bay-Delta ecosystem protection, including monitoring and the screening of unscreened diversions in the Bay-Delta watershed.

- 5) Recent State and Federal Legislation. Proposition 204 was passed by the voters of California on November 5, 1996. It authorizes a \$995 million bond issue to cover State cost sharing for activities to restore the Bay-Delta ecosystem and for other water resources activities in California. In September 1996, the President signed the Bay-Delta Act that authorizes \$143.3 million per year in additional Federal spending for Bay-Delta ecosystem restoration activities in fiscal years 1998, 1999, and 2000. The authorization became effective in November 1996 when California voters approved Proposition 204. The budget of the Department of the Interior for Federal fiscal year 1998 includes a request for the full \$143.3 million authorized in the Bay-Delta Act. The administration proposes to place the \$143.3 million in a new account under the U.S. Bureau of Reclamation, but to allocate these funds among participating Federal agencies based on programs recommended by CALFED and approved by the Secretary of the Interior. These funds would be used to match non-Federal cost sharing funds pursuant to this Agreement. It is anticipated that the DOI budget for federal fiscal years 1999 and 2000 will contain similar requests.

E) Solution

- 1) Addresses Four Resource Areas. It is agreed that the long-term Solution to the problems of the Bay-Delta Estuary must address four major areas of concern:
 - (a) Ecosystem Quality—To improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species;
 - (b) Water Quality—To provide good water quality for all beneficial uses;
 - (c) Water Supply—To reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta; and
 - (d) System Integrity—To reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic failure of Delta levees.

- 2) Recognizes Interdependence of Four Resource Areas and Resulting Benefits. The success of the effort to develop a lasting Solution for the Bay-Delta depends on the full and equal involvement of all interested parties. In a complex system such as the Bay-Delta, problems and objectives are not independent and self-contained. Relationships or linkages exist between all areas. For example the amount and timing of fresh water flowing into the Bay-Delta affects water quality, and consequently the health of the ecosystem. The integrity of the Delta levees has major implications for water supply, water quality, and ecosystem health. As Governor Pete Wilson noted in his 1992 Water Policy "...a phased approach, linked to simultaneous benefits for all, is critical for any progress."
- (a) Actions create multiple benefits. In many cases activities designed to improve one of the four resource areas (ecosystem quality, water quality, levee system integrity, and water supply reliability) will produce multiple benefits across the four areas.
 - (b) All areas must move forward together. Problems must be resolved in all problem areas. Improvements for some problems will not be addressed without corresponding improvements for other problems. No one sector of society or single revenue source should be made to bear the entire burden of a long-term Solution for the Bay-Delta. Similarly, no one sector should receive benefits without assurances that other sectors will be similarly benefited.
- 3) CALFED Bay-Delta Program Solution Principles. The following principles are central to the CALFED process and represent the basic parameters of a successful long-term Solution for the Bay-Delta. It must:
- (a) Be Affordable—An affordable Solution will be one that can be implemented and maintained within the foreseeable resources of the CALFED Bay-Delta Program and stakeholders.
 - (b) Be Equitable—An equitable Solution will focus on resolving problems in all problem areas. Improvements for some problems will not be addressed without corresponding improvements for other problems.
 - (c) Be Implementable—An implementable Solution will have broad public acceptance and legal feasibility, and will be timely and relatively simple compared with other alternatives.
 - (d) Be Durable—A durable Solution will have political and economic staying power and will sustain the resources it was designed to protect and enhance.
 - (e) Reduce Conflicts in the System—A successful Solution will reduce major conflicts among beneficial users of water.
 - (f) Pose No Significant Redirected Impacts—A Solution will not solve

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problems in the Bay-Delta by redirecting significant negative impacts to other parts of the Bay-Delta or other regions of California.

4) Early Implementation.

- (a) Significance of Early Implementation Opportunities—The ecosystem restoration element of the CALFED Bay Delta Program is designed to serve as the foundation for the other program elements. Ecosystem restoration Actions represent the first step in realizing benefits for water supply, water quality and system integrity. Moving forward on ecosystem restoration Actions has two benefits. Some Actions will provide immediate benefits, and therefore should be implemented immediately. Other Actions, although they require a substantial lead-time before benefits are obtained, provide important research in the Bay-Delta to guide adaptive management. This second set of Actions should also begin immediately, both to gain the benefits of the increased knowledge, and to hasten the realization of the benefits.
- (b) Criteria for Early Implementation—Federal funds may be obligated prior to completion of CALFED final programmatic EIR/EIS only if (1) consistent with 40 C.F.R. 1506.1(C) and (2) used for purposes that the Secretary of the Interior finds are of sufficiently high priority to warrant such an expenditure. In addition, each selected project must:
 - (i) be justified independently of the Program by the lead agency(ies) for that project;
 - (ii) be accompanied by an adequate environmental document, the preparation of which included consultation with responsible and trustee agencies; and
 - (iii) not prejudice the ultimate decision of the Program.

F) Administration

- 1) Multiple Funding Sources; Multiple Projects. A major goal of the Program is to provide for coordination of funding from multiple sources directed to multiple projects on a dynamic basis to maximize flexibility in timing and implementation of Bay-Delta Actions.
- 2) Coordination with Existing Programs and Funding Sources. It is highly desirable to coordinate expenditures of funds authorized by the Bay-Delta Act and Proposition 204 with expenditures of funds pursuant to ongoing programs in order to achieve maximum overall effectiveness of Bay-Delta Actions. Actions taken under this Agreement will be fully coordinated with existing programs, activities, and agreements, and will comply with applicable provisions of State and Federal laws and regulations, including, but not limited to the National Environmental Policy Act, California Environmental Quality Act, Federal and State Endangered Species Acts, and the Fish and Wildlife Coordination Act.

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There are currently a number of ongoing projects and programs which focus on the Bay-Delta including, but not limited to:

- (a) The Central Valley Project Improvement Act (hereinafter "CVPIA");
 - (b) The Natural Resources Conservation Service fish screen program;
 - (c) Four Pumps Program;
 - (d) Tracy Mitigation Program.
- 3) Recognition of Terms of Existing Cost sharing Agreements. The parties recognize that there are a number of existing cost sharing agreements with terms and cost sharing ratios specific to their subject matter and, in some cases, designed to comply with authorizing legislation. This Agreement does not alter the terms of those prior agreements nor does it limit the ability of parties to agree to different cost sharing terms and ratios for other projects, in the absence of such existing agreements.
 - 4) Coordination Among Implementing Entities. A high level of coordination among implementing entities is desirable to insure that maximum benefits are obtained for dollars expended. The parties commit to spending these funds in such a manner as to secure maximum results from each expenditure.
 - 5) Need for Long-term Commitment/Funding for Implementation: State / Federal / Stakeholders. Implementation of the Solution developed by the CALFED Bay-Delta Program will be a multi-decade effort. Partnerships among agencies and with stakeholders formed during this process must continue throughout this effort. To date, cost sharing by the Federal government, the State of California and the stakeholder community has been an essential factor in the progress and success of the Program. This level of cooperation will need to continue to ensure that the costs of Bay-Delta Solution are equitably and fairly distributed.
 - 6) Stakeholder Coordination. Every effort shall be made to secure stakeholder funding, but lack of stakeholder funding shall not prevent the State and the United States from proceeding with any particular Action.
 - 7) Accounting System and Reporting Cycle. There is a need for an accounting system and reporting cycle to maintain cumulative cost sharing ratios while enabling flexible contributions by year and project. The parties share a common goal of maximizing the flexibility with which Actions may be carried out pursuant to this Agreement. The parties intend to cooperate in funding the Actions based on appropriations available to them, and are structuring this Agreement so that one or more party(s) may fund all or any percentage of an Action, in order that an Action not be delayed due to one party's funding constraints.
Nothing in this Agreement is intended to prevent any party from moving forward with implementation of an Action in the absence of another party's

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having obtained an appropriation or other funding for that Action, although cost sharing credit for such an Action may be acquired only as established in this Agreement including amendments and supplements.

G) Agreement

- 1) Does Not Limit Other Ongoing Activities. Several of the parties to this Agreement are carrying out studies, programs, or actions related to the Bay-Delta. Nothing in this Agreement is intended to limit or prevent any party from proceeding with these activities.
- 2) Does Not Affect Existing Legal Obligations. Nothing in this Agreement is intended to affect any party's obligations under existing laws.

H) Long-Term Cost Sharing Principles

- 1) The Long-Term Cost Sharing Principles set forth in Appendix ____, which are incorporated into this Agreement by this reference, are endorsed by the parties to this Agreement and are intended to provide a framework for future agreements which may be incorporated in this Agreement as amendments or supplements which may be separately executed.

II) Interim Ecosystem Restoration

A) Supplemental Principles

- 1) Interim Process. Interim Ecosystem Restoration is intended to cover expenditures of State, Federal and stakeholder Category III funds through federal fiscal year 2000 or until a successor process has been put in place pursuant to the CALFED Bay-Delta Program. It will provide the method for cost sharing for Bay-Delta Actions until it is replaced by a long-term structure.
- 2) Includes Funding Incremental to Existing Efforts Only. The Interim Ecosystem Restoration process is for funding that is incremental to Baseline funding. Funding under this process is not intended to replace funding currently available from other sources and in connection with other programs.
- 3) Public/Stakeholder Input/Involvement in Process. The parties are committed to insuring that the Bay-Delta stakeholders and members of the general public are involved to the maximum extent possible in project selection and implementation.
- 4) Expedited Review and Approval of Projects. In order to begin implementation as soon as practical of ecosystem restoration Actions that are common to all of the alternatives, have broad support, are of unquestionable environmental benefit and which will provide valuable information for adaptive management of the Bay Delta in later years of the program, the parties are committed to the maximum extent feasible to facilitate expedited review and approval of projects pursuant to this Agreement.
- 5) Costs Eligible for Cost sharing. Cost sharing pursuant to this Agreement may include capital, operation and maintenance costs where appropriate, and other costs as provided for in task orders for individual restoration

Actions. Costs incurred by the parties in carrying out individual restoration Actions pursuant to this Agreement and for which cost sharing shall be calculated may include, but are not limited to: planning costs, including costs associated with preparation of environmental documentation and with obtaining permits and other regulatory approvals; design costs; construction and implementation costs, including contract administration; and costs of initial start-up and testing before a constructed facility is placed into service. The value of in-kind or in-lieu services shall not be credited toward a party's cost sharing contribution.

- 6) Cost sharing Ratios. Spending decisions will be made so that neither the State, the Federal government, nor stakeholders will be disproportionately responsible for cost sharing of amounts over Baseline. It is intended that the expenditures by the State and Federal governments pursuant to this Agreement for costs over the Baseline will be roughly proportional. By mutual agreement of the parties, one party may fund all, none, or any percentage of the cost of an individual restoration Action, as long as the total amount expended by each party is roughly proportional to the total amount expended by the other.

B) Category III/Restoration Coordination

1) Decision-making Process

[Note: This section is intended to memorialize the process for Category III expenditures currently being developed under the auspices of the Restoration Coordination program. The intent is to incorporate the completed process description into this section.]

2) Sources of Funding

(a) Proposition 204. Proposition 204 authorizes \$60 million for Category III activities.

(b) Public Law 104-333. P.L. 104-333 states that out of the \$143.3 million authorized to be appropriated for fiscal years 1998, 1999, and 2000, is to come "the initial Federal share of the cost of developing and implementing that portion of an ecosystem protection plan for the Bay-Delta, referred to as 'the Category III program' emanating out of the document entitled 'Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government' dated December 15, 1994"

(c) State/Federal Contributions. Pursuant to this Agreement that Federal share is hereby defined to be _____ for fiscal years 1998-1999 and 2000 to be matched by a total of \$60 million as the State share under Proposition 204.

(d) Stakeholder Contributions.

(i) Current. Pursuant to commitments in the Delta Accord, the stakeholders have contributed a total of \$22 million with an additional \$10 million expected to be contributed in 1997.

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- (ii) Future. The parties to this Agreement expect that Stakeholders will contribute a total of ____ million to match the State and Federal Category III cost shares through the year 2000.

(e) Funding Contingent. The parties will use their best efforts to seek funding for restoration Actions from whatever sources may be available to them, but recognize that the federal funding is contingent upon appropriations by Congress, and that California's funding is subject in part to the sale of bonds pursuant to the terms of Proposition 204 and to the availability of funds through California's normal budget process or to availability of funding from other sources.

C) Other Bay-Delta Programs

Many authorized programs or projects administered by various federal and state agencies are or could be implemented in a manner consistent with the CALFED Bay-Delta Program. The CALFED Program would benefit from a commitment by these agencies to make a good faith effort to fund and implement such programs or projects consistent with the CALFED Program goals and the cost-sharing principles described by this Agreement.

1) California Proposition 204

The State commits to making a good faith effort to fund and implement the programs included in Proposition 204 consistent with the goals and cost-sharing principles described by this Agreement. This commitment, however, does not alter, replace, or reduce any State agency's ultimate authority delegated in Proposition 204 over any decisions it may make on such programs or projects.

(a) Delta Levee Rehabilitation Program

Prop 204 provides \$25 million to DWR for this program. DWR must expend the funds on levee rehabilitation improvement projects that, to the greatest extent possible, are consistent with the CALFED program. The Delta Levee Program provides \$12 million annually to fund \$ 6 million for local assistance for delta levee maintenance and \$6 million for special delta flood control projects, subsidence studies, and levee monitoring programs.

(b) South Delta Barriers Program

Prop 204 provides \$10 million to DWR to pay the state's share of costs for mitigation of non-SWP or non-CVP impacts of the Program, which could include a fish barrier at the head of Old River, and environmental enhancement in the delta. Expenditure of these funds is subject to DFG approval that a net habitat benefit will result.

(c) Delta Recreation Program

Prop 204 provides \$2 million to Department of Parks and Recreation to provide for, and improve, public access to, and to maximize public recreational opportunities on, the lands and waters of the Delta consistent with existing uses, sound resource conservation principles, and protection of private property rights

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- (d) CALFED Bay-Delta Program
Prop 204 provides \$3 million to DWR for funding the State's share of costs associated with planning and feasibility activities incurred in connection with the CALFED Bay-Delta Program
- (e) Clean Water Loans and Grants
Prop 204 provides to the SWRCB \$30 million for grants to small communities for construction of eligible treatment works and \$80 million for loans pursuant to the Clean Water Act to aid in construction or implementation of eligible treatment works. Such treatment works include publicly owned treatment works and conservation and management programs as defined under the CWA which are eligible for funding from the State Revolving Fund Loan Account or federal assistance, are necessary to prevent water pollution or to reclaim water, and comply with applicable water quality standards, policies, and plans.
- (f) Water Recycling Program
Prop 204 provides \$ 60 million to the SWRCB for loans to public agencies to aid in the design, construction, operation, and maintenance of eligible recycling projects, and for grants to public agencies for facility planning studies for water reclamation projects. The SWRCB may also use the funds to undertake plans, surveys, research, and studies to prepare comprehensive statewide or area wide studies and reports on water recycling and the collection, treatment, disposal and distribution of wastewater under a comprehensive cooperative plan.
- (g) Drainage Management
Prop 204 provides \$ 27.5 million to the SWRCB for loans to local agencies to construct drainage water management units for the treatment, storage, or disposal of agricultural drainage water and to the SWRCB to undertake plans, survey, research and studies to implement this loan program, which requires the SWRCB to give priority to source reduction projects.
- (h) Delta Tributary Watershed Program
Prop 204 provides \$ 15 million to the SWRCB for grants for eligible watershed rehabilitation projects within a watershed that drains into the Delta or the Trinity River undertaken on lands owned or operated by the federal, state, or a local government, or a private person or entity.
- (i) Feasibility Projects
Prop 204 provides \$10 million to DWR for feasibility and environmental investigations for: (1) off-stream storage upstream of the Delta, (2) regional water recycling, (3) water transfer facilities that would deliver Colorado River water for use in the southern California coastal plain and reduce demands on the Bay-Delta, and (4) desalination.
- (j) Water Conservation and Groundwater Recharge
Prop 204 provides \$ 25 million to DWR for loans to local agencies for (1) capital investments in agricultural and urban water conservation facilities,

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(2) groundwater recharge facilities, and (3) feasibility studies of projects potentially eligible for funding. DWR shall give priority to groundwater recharge projects in over-drafted groundwater basins and will certify that the conservation facilities will result in a net saving of water.

(k) Local Projects

Prop 204 provides \$25 million to DWR to fund loans and grants for construction of water supply facilities and for feasibility studies of such facilities to local agencies in rural and mountain counties (e.g., a public agency in a county of the 22nd class or of smaller population).

(l) Sacramento Valley Water Management and Habitat Protection Measures

Prop 204 provides \$ 25 million to DWR for program or projects in the Sacramento Valley to assist in implementation of the SWRCB 1995 Bay-Delta Water Quality Control Plan. The SWRCB shall provide public review of the proposed program or project and determine that the programs are consistent with the WQCP. Funds shall not be used for programs or projects that are the obligation of the federal Central Valley Project or the State Water Project.

2) Bay-Delta Act

The Bay-Delta Act authorizes appropriations of \$143.3 million for three years to federal agencies and departments that currently are or subsequently become participants in the CALFED Bay-Delta Program for purposes of funding Bay-Delta ecosystem restoration activities and programs. \$_____ million appropriated under the Bay-Delta Act is to fund the federal share of Category III activities. Remaining funds appropriated under the Bay-Delta Act shall be expended on the initial Federal share of the cost of developing and implementing the ecosystem restoration elements of the long-term CALFED Program.

A component of the CALFED Program is early implementation of projects and programs common to all of the alternatives now under consideration by the CALFED Program. These projects and programs have the goal of providing early environmental and other benefits and of providing valuable information for use in adaptively managing the Bay-Delta system as the CALFED Program continues.

Therefore, in order to obtain the greatest benefits of early implementation projects and programs, the Federal agencies and departments commit to appropriating funds provided by the Bay-Delta Act for the federal share of costs for projects and programs that meet these early implementation goals. This commitment, however, does not alter, replace, or reduce an agency's ultimate authority over any decisions it may make on such programs or projects.

D) Contracting Provisions

1) Task Orders

(a) The parties shall negotiate individual task orders for each of the restoration actions, or elements thereof, selected for implementation. The

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task orders shall contain the elements set forth in the attached Exhibit A, which is incorporated into this Agreement by this reference. Any individual restoration action may be divided into elements to facilitate implementation of the action, and task orders may be negotiated for the elements. Where appropriate, individual task orders shall also be signed by the State or Federal entity responsible for performing or contracting for the work to be performed.

- (b) The task orders shall take effect upon signature by all designated parties, subject to approval of the California Department of General Services. Neither party shall be obligated to incur costs pursuant to a task order in excess of the costs authorized in the task order. Task orders may be amended by mutual written consent of the parties, subject to approval by the California Department of General Services. The parties may amend task orders to reflect updated costs of restoration actions, as the costs become better refined in defining the scope of the restoration actions.
 - (c) Task orders shall have a term and provisions authorizing amendment or modification. Upon termination of a task order, the parties shall submit to each other a written notice of completion and a final accounting of all costs incurred pursuant to that task order, up to the date of the written notice of completion, provided, however, that costs may be allowed up to such other date as the parties mutually determine. The final accounting shall be used to establish the parties' responsibilities for any outstanding costs obligated pursuant to the task order.
 - (d) Task orders may be terminated by mutual written consent of the parties. Upon termination of a task order, the parties shall submit to each other a final accounting of all costs incurred pursuant to that task order, up to the date of written notice of termination, provided, however, that costs may be allowed up to such other date as the parties mutually determine. The final accounting shall be used to establish the parties' responsibilities for any outstanding costs obligated pursuant to the task order.
 - (e) Task orders may also be terminated by any signatory party providing the other parties with 30-day advance written notice of termination. Upon termination of a task order, the parties shall submit to each other a final accounting of all costs incurred pursuant to that task order, up to that date of the written notice of termination. The parties shall then establish the allowability for cost-sharing purposes of each party's costs incurred up to the date of termination.
 - (f) Each party may carry out all or parts of the work covered in a task order on behalf of the other party as mutually agreed upon in the task order. Costs incurred in so doing shall be credited toward the cost-share obligation of the performing party.
 - (g) The CALFED program manager shall sign each task order.
- 2) Additional Agreements. The parties recognize that they may, in order to carry out the goals of the Bay-Delta Act and of Proposition 204, execute

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additional agreements, or amendments to this Agreement, for cost-sharing or for the performance of work not covered in, or in addition to, the scope of State-Federal cost-sharing covered by the Bay-Delta Act and Proposition 204.

- 3) Term of Agreement. This Agreement shall become effective upon approval by the California Department of General Services. Unless terminated earlier pursuant to Articles ____ or ____, this Agreement and all associated task orders shall terminate on or before December 31, _____. California shall not be required to contribute funds pursuant to this Agreement for work performed after the effective date of its termination.
- 4) Commencement Date for Costs. As mutually agreeable, each party may include as allowable costs in a task order those costs incurred after November 5, 1996, the effective date of Proposition 204 and the Bay-Delta Act.
- 5) Additional Contracts. Either party or both parties to this Agreement may enter into any contracts necessary to implement this Agreement or individual task orders. During the term of this Agreement, each party agrees that all contracts entered into in furtherance of this Agreement shall contain the appropriate language necessary to satisfy both State and Federal laws, rules and regulations relating to conflict of interest.
- 6) Three Percent Cap on Administrative Costs.
- 7) Administration of Cost-Sharing
- 8) Annual Accounting. The parties shall make an annual accounting, on a fiscal year basis, for their costs incurred under this Agreement. Each party shall submit its accounting to the other party by _____(date).
- 9) Adjustment of Balance. Costs incurred under this Agreement will vary from year to year based on the task orders in effect at the time. The parties recognize that one party may have incurred costs under a task order or orders during a year in excess of its proportionate share of the overall contribution contemplated under this Agreement. The parties will review the annual accounting and evaluate the balance between the parties in terms of costs incurred and obligations under the task orders. Either party may, in consideration of that balance and in consideration of the funding expected to be available, request that the work plan provided for in Article _____ be modified to adjust the balance between costs incurred and obligations under the task orders. Notwithstanding that balance, nothing in this article is intended to prevent either party from proceeding with the implementation of an executed task order.
- 10) Transfers of Funds. Transfers of funds between the parties shall be carried out as specified in the task orders for individual restoration actions, provided, however, that if the balancing of incurred costs and obligations described above cannot be achieved by modification of the work plan, the parties may agree to transfer funds between themselves in order to adjust the balance. Such transfers shall be reflected in the parties' annual accounting.

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11) Final Accounting. Upon completion of all task orders, or upon expiration of this Agreement, or upon its termination, the parties shall submit to each other a final accounting of all costs incurred pursuant to the task orders. Any necessary adjustments for underpayments or overpayments shall be made as soon as practicable thereafter to reflect the overall cost-sharing obligation.

12) Cost-Sharing of Operations and Maintenance. At the expiration of this Agreement, the parties will evaluate the need for continued cost-sharing in operation and maintenance costs of completed restoration actions, for those actions having a task order which includes operation and maintenance costs obligations at the time of expiration. The parties may, where appropriate, execute other agreements for the continued cost sharing of operation and maintenance for those restoration actions on a case-by-case basis.

E) Budgeting and Funding

1) Maximum Payable. The maximum payable by California under this Agreement shall not exceed \$_____. The maximum payable by the United States shall not exceed \$_____.

2) Budget Process and Format. The parties will establish a mutually acceptable process and format for budgeting for the restoration actions to be performed; recognizing that each party operates on a two-year advance budget cycle.

3) Annual Update of Work Plan and Budget

(a) Schedule for Update. Each January, the parties shall complete an annual update of the estimated costs of pending restoration actions, or elements thereof, and of the costs actually incurred pursuant to task orders. The parties shall also update the work plan, and shall review the balance between costs incurred and obligations under the task orders. Nothing in this article is intended to prevent the parties from updating the estimated costs or work plan more frequently, if desired.

(b) Estimated Budget. Each January, the parties shall complete an estimated budget that includes identification of the estimated timing of annual and capital costs, and shows estimated costs to be incurred over the next three fiscal years. This budget does not represent a commitment of funds by the parties. Funds may be committed only as provided for in task orders for the restoration actions, subject to the provisions of _____.

F) Coordination with Respect to Restoration Actions

The parties shall cooperate and consult closely with each other and with other participants in the CALFED process in the development and implementation of the restoration actions covered by this Agreement. The parties shall provide each other with review copies of draft reports, proposals, designs, and other significant material, and shall coordinate with each other on regulatory agency agreements and environmental documentation which may be necessary to implement individual actions. The parties shall meet and confer as necessary to keep each others informed of the status of development and implementation of individual restoration actions.

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G) Reports

The parties shall submit to each other written documentation or reports as specified in the task orders. Additionally, each party shall submit to the other party a quarterly status report describing the party's activities pursuant to this Agreement, which shall include updates as appropriate to the annual cost summary provided for in _____. The quarterly reports shall be due on the last day of October, January, April and July, for the quarter immediately preceding.

H) Amendments

- 1) Not Valid Unless in Writing. Amendments to this Agreement shall not be valid unless made in writing, signed by the parties, and approved by the California Department of General Services. No oral understanding or agreement not incorporated herein shall be binding on any of the parties herein.
- 2) Impossibility of Performance. If either party or agency within the control of either party becomes unable for reasons outside of its control, including restraint by a court or public agency, to carry out a restoration action specific in a task order, the party shall, by written notice, so inform the other party. The parties shall, within 30 days from the date of the notice, attempt to resolve the inability to carry out the action. If resolution cannot be achieved within this time, any prospective cost-sharing obligations incurred pursuant to an issued task order shall be suspended until such time as parties either achieve resolution or amend this Agreement to modify the action, substitute an implementable action, or delete the action from Exhibit A.

I) Termination for Cause

- 1) By State. California may terminate this Agreement in whole or in part at any time before the date of completion whenever it is determined that the U.S. has failed to comply with the conditions of the Agreement. Prior to such termination, California shall provide written notice to the U.S. of California's intent to terminate the Agreement and the reasons for the proposed termination. The U.S. shall then have 30 days from the date of the notice to correct the defects specified in the notice. If after the 30-day period has expired the U.S. has not corrected the defects to the satisfaction of California, California shall promptly notify the U.S. in writing of its decision to terminate the Agreement and the reasons for the termination together with the effective date.
- 2) By United States. The U.S. may terminate this Agreement in whole or in part at any time before the date of completion whenever it is determined that California has failed to make payments more than 90 days after the required invoice and other documentation are received from the U.S. Prior to such termination, the U.S. shall provide written notice to California of the U.S.'s intent to terminate the Agreement and the reason for the proposed termination. California shall then have 30 days from the date of the notice to correct the defects specified in the notice. If after the 30-day period has

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expired California has not corrected the defects to the satisfaction of the U.S., the U.S. shall promptly notify California in writing of the U.S.'s decision to terminate the Agreement, together with the effective date.

J) Termination for Convenience

Either party may terminate this Agreement in whole or in part when both parties agree that the continuation of the work would not produce beneficial results, or that one or the other party is unable to obtain funds after diligent effort, and that further efforts would be fruitless. The two parties shall agree on the termination conditions, including but not limited to the effective date.

K) Administration of Agreement

This Agreement shall be administered by the California Secretary for Resources and the Secretary of the Interior or their designees in conjunction with the CALFED manager and management and staff of the CALFED member agencies. They may appoint subcommittees or technical work groups as needed to implement the provisions of the Agreement.

L) Notice

- 1) For the purposes of administering this Agreement, documents which California is required to submit to the U.S. shall be sent to:
Bruce Babbitt
Secretary of the Interior
- 2) and documents which the U.S. is required to submit to California shall be sent to:
Douglas P. Wheeler
Secretary for Resources

M) Dispute Resolution

In the event of a dispute, the parties shall meet as soon as possible to resolve the dispute. If the parties cannot reach agreement, then either party shall submit any claim it may have regarding the performance of this Agreement, including but not limited to claims for additional compensation or extension of time, to the Secretary for Resources and to the Secretary of the Interior. The parties shall then attempt to negotiate a resolution of such claim. However, the U.S. does not waive any rights or duties it may have as provided under federal laws, rules, or regulations.

N) Records and Audits

Subject to applicable laws and regulations, both parties shall have full access to the books and records of the other party as they pertain to this Agreement, with the right to make copies thereof. Unless otherwise provided by federal laws, rules, or regulations, the parties shall be subject to the examination and audit of the California State Auditor for a period of three years after final payment under the Agreement.

O) Standard Clauses

The provisions of the attached Exhibit B are hereby incorporated into this Agreement.

III) Signatures

In witness whereof, the parties hereto have executed this Agreement on this
_____ day of _____, 1997.

THE STATE OF CALIFORNIA

THE UNITED STATES OF AMERICA

By _____
Douglas P. Wheeler
Secretary for Resources

By _____
Bruce Babbitt
Secretary of the Interior

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Appendix A – Baseline Funds, Programs and Projects
[a listing of items that define Baseline expenditures]

Appendix B – Long-Term Cost Sharing Principles
[a listing of principles for the Long-Term Financial Strategy]

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Exhibit A—Contents of Task Orders

Task orders prepared pursuant to this Agreement shall include, at a minimum, the following details:

1. Detailed scope of work to be undertaken
2. Identification of agency(ies) or entity(ies) performing the work, and specific roles and responsibilities of CALFED member agencies, if applicable;
3. Deliverables to be provided, if any;
4. Term;
5. Schedule for performing the work;
6. Staff to be assigned and estimated hours;
7. Cost of the work and maximum payable;
8. Sources of funds;
9. Cost-sharing arrangements;
10. Payment schedule and invoicing procedure;
11. Schedule for coordination meetings, if applicable;
12. Schedule and process for review and approval of work at key milestones;
13. Schedule for status reports and fiscal reports;
14. Names of contact persons;
15. Signatures of authorized representatives of each party;
16. Termination clause.

Exhibit B – Standard Clauses

1. The U.S., and the agents and employees of the U.S., in the performance of the Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.
2. Without the written consent of the other party, this Agreement is not assignable by either party either in whole or in part.
3. Time is of the essence in this Agreement.
4. The U.S. affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and the U.S. affirms that it will comply with such provisions before commencing the performance of the work under this Agreement. This provision shall apply to the extent provided by federal laws, rules, and regulations.
5. During the performance of this Agreement the U.S. and its subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. The U.S. shall ensure that evaluation and treatment of employees and applicants for employment are free of such discrimination. The U.S. shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135 - 11139.5), and the regulations or standards adopted by the awarding State agency to implement such article. The U.S. shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. The U.S. and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The U.S. shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. This provision shall apply only to the extent required by federal laws, rules, or regulations.
6. If applicable, travel and per diem expenses to be reimbursed under this Agreement shall not exceed the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.
7. Nothing in this Agreement is intended to define, determine, limit, or affect the rights of third parties.

if any,

, if any

8. The waiver of a breach of any of the provisions of this Agreement shall not be deemed to be a waiver of any other provisions hereof, or of a subsequent breach of such provisions.

9. During the performance of this Agreement, California agrees as follows:

(a). It will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. It will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruiting or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. It agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the U.S. setting forth the provisions of this equal opportunity clause.

(b). California will, in all solicitations or advertisements for employees placed by or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c). California will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the U.S., advising the labor union or workers' representative of California's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d). California will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e). California will furnish all information and reports required by said Executive Order, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the U.S. for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f). In the event of California's noncompliance with the equal opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and it may be declared ineligible for further government contracts in accordance with procedures authorized in said Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g). California will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 112465, so that such provisions will be binding upon each subcontractor or vendor. It will take such actions with respect to any subcontract or purchase order as the U.S. may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event California becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the U.S. it may request the U.S. to enter into such litigation to protect the interests of the U.S.

10. (a). No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

(b). No official of California shall receive any benefit that may arise by reason of this Agreement other than that as a citizen of California and in the same manner as other citizens of California.

11. Where the terms of this Agreement provide for action to be based upon the opinion, judgement, approval, review, or determination of the parties, such terms are not intended to be and shall not be construed as permitting such opinion, judgement, approval, review, or determination to be arbitrary, capricious, or unreasonable.

12. This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.